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Supreme Court, U.S.
FILED

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Supreme Court Docket No. _____

THE SUPREME COURT OF THE UNITED STATES

JOHN S. KARLS, PRO SE

Petitioner,

v.

TEXACO INC.

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

WHEREAS, Texaco has admitted on brief that if the 29 U.S.C. § 1144(b)(1) exceptions to preemption are honored, that a vast proportion of its employees hired prior to 1975 will be able to claim "fraud in the inducement" and

WHEREAS, Texaco has claimed on brief that if the preemption exceptions are honored, that a vast proportion of the employees hired by other corporations prior to 1975 will also be able to claim "fraud in the inducement" and

WHEREAS, most of the "baby boom" generation entered the work force prior to 1975 and will be reaching normal retirement age over the next two decades,

1. Did the Tenth Circuit, in a case of first impression, err in holding that pre-1975 "fraud in the inducement" does not qualify for the first preemption exception of 29 U.S.C. § 1144(b)(1): "This section (ERISA preemption of state common-law causes of action) shall not apply with respect to any cause of action which arose ... before January 1, 1975"?

2. With respect to the second preemption exception of 29 U.S.C. § 1144(b)(1) – "This section shall not apply with respect to ... any act or omission which occurred before January 1, 1975" –

   a. Are the Third, Fourth, and Fifth Circuits (the minority view) correct that the only act or omission described in the exception is the decision of the ERISA administrator when the employee retires?

   b. Or are the First, Second, Sixth and Ninth Circuits (the majority view) correct that the act or omission described in the exception can be a pre-1975 event that governs the post-1975 decision of the ERISA administrator?

LIST OF PARTIES AND CORPORATE DISCLOSURE

List of Parties

The caption of the case contains the names of all of the parties.

Corporate Disclosure Statement

The defendant-appellee, Texaco Inc., was a publicly-held company during the entire period that the plaintiff-appellant was employed by Texaco. During that period, there was no publicly-held company that owned 10% of more of Texaco's stock.

At the time this lawsuit commenced, Texaco Inc. was no longer a publicly-held company. All of its stock had been acquired by Chevron Corporation, a publicly-held company none of whose stock is owned 10% or more by any other publicly-held corporation. Subsequently to the acquisition, Chevron Corporation changed its name to ChevronTexaco Corporation.

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TABLE OF CITED AUTHORITIES

Pages	Authority
16	**Appian Estates Inc. v. Mastroddi**, 274 A.D.2d 366, 710 N.Y.S.2d 119 (Second Department, 2000)
19, 21	**Cowan v. Keystone Profit Sharing Fund**, 586 F.2d 888 (1st Cir., 1978)
23	**Freeman v. Jacques Orthopaedic and Joint Surgery Medical Group, Inc.**, 721 F.2d 654 (9th Cir., 1983)
14, 15, 20, 22	**Malone v. White Motor Corp.**, 435 U.S. 497, 98 S.Ct. 1185, 55 L.Ed.2d 443 (1978)
16	**Nortek Inc. v. Alexander Grant & Co.**, 536 F.2d 624 (5th Cir., 1976)
14, 22	**Reiter v. Sonotone Corp.**, 442 U.S. 330, 99 S.Ct. 2326, 60 L.Ed.2d 931 (1979)
15, 16, 22, 24	**Rocco v. New York State Teamsters Conference Pension and Retirement Fund**, 281 F.3d 62 (C.A.2, 2002), cert. den. 123 S.Ct. 155, 154 L.Ed.2d 29
13	**Rodriguez v. MEBA Pension**, 872 F.2d 69 (4th Cir. 1989)

13-14, 19-21, 23-24	**Stevens v. Employer-Teamsters Joint Council No. 84 Pension Fund**, 979 F.2d 444 (6th Cir., 1992)
16	**Yatter v. William Morris Agency Inc.**, 268 A.D.2d 355, 702 N.Y.S.2d 243 (First Department, 2000)
13-18	29 USC Sec. 1144 – **The ERISA Pre-Emption Provision**

CITATIONS OF THE OPINIONS AND ORDERS IN THIS CASE

John S. Karls v. Texaco Inc., U.S. Court of Appeals for the Tenth Circuit, Order and Judgment, May 20, 2005

- Case No. 04-4110
- No official citation "yet" and no unofficial citation per the Clerk's Office as of August 16, 2005, the date this Petition went to press
- Order and Judgment reproduced at page 1a of the Appendix

John S. Karls v. Texaco Inc., U.S. Court of Appeals for the Tenth Circuit, Order Denying John Karls' June 3, 2005 "Motion for Order to Extend FRAP Rule 40(a)(1) Time" (Denial Order dated June 14, 2005)

- Case No. 04-4110
- No official or unofficial citation per Clerk's Office
- Denial Order reproduced at page 7a of the Appendix

John S. Karls v. Texaco Inc., U.S. District Court for the District of Utah, Order Denying Plaintiff's Motion to Remand and Granting Defendant's Motion to Dismiss, April 22, 2004

- Case No. 2:03-CV-775-TS
- No official or unofficial citation per Clerk's Office
- Order reproduced at page 9a of the Appendix

STATEMENT OF THE BASIS FOR JURISDICTION

(i) The date of the decision of the Tenth Circuit was May 20, 2005.

(ii) The date of "any order respecting rehearing" – though not relevant to the expiration of the 90-day period for appeal – is June 14, 2005, the date on which Plaintiff-Appellant's "Motion For Order to Extend FRAP Rule 40(a)(1)" to June 13, 2005, was denied by the Tenth Circuit and Plaintiff-Appellant's "Petition for Re-Hearing," filed on June 13, 2005, was returned.

(iii) Not applicable.

(iv) The ERISA preemption exceptions contained in 29 U.S.C. § 1144(b)(1).

(v) Not applicable.

STATUTES

ERISA Preemption and Pre-1975 Exception –

§ 1144. Other laws

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

(b) Construction and application

(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

STATEMENT OF FACTS

Basis for Federal Jurisdiction

This is an action solely for common-law fraud brought by John Karls in Utah state court. Texaco removed the action to the U.S. District Court for the District of Utah on the alleged grounds that an ERISA plan was involved. The U.S. District Court and the Tenth Circuit agreed with the removal.

Facts

1. This is an action solely for common-law fraud and common-law breach of contract for a failure to make promised payments. (Please see the Complaint)
2. It was dismissed on motion without either a trial or a hearing, and without the admission of any evidence.
3. John Karls was an employee of Texaco from May 1, 1974, to December 31, 1987 (Complaint – Par. 1)
4. "**As part of plaintiff's remuneration for such employment, he was promised a pension by defendant prior to, and as an inducement of, the commencement of employment on May 1, 1974, and the plaintiff relied on that promise in commencing employment on May 1, 1974.**" (Quoting the Complaint – Par. 2, as amended)
5. In January, 2003, John Karls called Texaco and stated he would like his pension to start on March 1, 2003, regardless of what the correct amount of the payment would be with that "start date." (Complaint – Par. 5)
6. Texaco stated that it would not process John Karls' request until Texaco had calculated the monthly pension amount that it would be willing to pay and had mailed

the calculation to John Karls. (Complaint – Par. 10)

7. John Karls called Texaco several times during February and March, 2003, to inquire why he had not received the calculation. (Complaint – Par. 11-12)

8. Texaco claimed to have mailed the calculation, together with a Personal Identification Number ("PIN") on March 6, 2003, to John Karls c/o The Harvard Club of New York City, **but to an erroneous address for the Harvard Club that had never been authorized by John Karls and that rendered the letter undeliverable.** (Complaint – Par. 13-17)

9. When John Karls called Texaco several times during April, 2003, to request Texaco to call the Harvard Club to verify directly with them their correct address, Texaco steadfastly refused to do so and stated that Texaco would never communicate with John Karls until he was able to produce the PIN that Texaco had sent to the erroneous address which Texaco was refusing to verify with the Harvard Club. (Complaint – Par. 18-19)

10. On April 28, 2003, John Karls sent a "demand letter" by fax to Texaco stating that he was commencing suit against Texaco for their steadfast refusal to verify the correct address for the Harvard Club. As a result, Texaco began using the correct address, and re-sent the pension calculation. (Complaint – Par. 20-21)

11. After several further delaying tactics, Texaco sent a letter dated June 26, 2003, stating that monthly payments would commence by wire transfer beginning June 30, 2003, **even though it would be reasonable for John Karls to sue Texaco because it would only be making fractional payments and, accordingly, even though Texaco expected John Karls to sue.** (Complaint – Par. 22-43)

12. Despite its 1974 promise to pay a pension and its June 26, 2003 letter that payments would commence on June 30, 2003, "no payments were ever made." (Complaint – par. 48)

13. Between July 1, 2003, and the commencement of this action on August 21, 2003, John Karls sent to Texaco 23 requests for an explanation why no payments had been made – Texaco refused to answer the inquiries or communicate in any other way (Complaint – Par. 49-50)

14. Prior to commencement of this action, Texaco had never indicated that John Karls' pension had been funded by an ERISA plan and, indeed, its actions for 16 years (no exit interview, no annual information, no copy of any plan, etc.) had been inconsistent with such funding. (Please see John Karls' October 5, 2004 Tenth Circuit "Motion to Strike Copy Alleged Retirement Plan and References Thereto" which alleged plan had been attached to Texaco's Answer Brief)

15. Nevertheless, on September 17, 2003, Texaco moved in U.S. District Court to dismiss on the grounds that John Karls' pension was funded pursuant to an ERISA plan and that John Karls had allegedly failed to exhaust his administrative remedies.

16. John Karls has objected on at least four occasions (please see John Karls' aforementioned Tenth Circuit Motion to Strike) to any consideration by the US District Court of an Alleged Plan on the grounds that (A) no Alleged Plan had been introduced into evidence and, accordingly, (B) John Karls had been denied his right to cross-examine Texaco regarding why its actions for 16 years had been inconsistent with any funding of John Karls' pension.

17. Indeed, as quoted in John Karls' aforementioned Tenth Circuit Motion to Strike, John Karls U.S. District Court Memorandum of October 7, 2003 in Opposition to